IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1385 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARSINH HIMATSINH

Versus

JORAVARSINH BAPUSINH

Appearance:

MR AJ YAGNIK for MR GIRISH PATEL for the Appellant

MR ASPI M KAPADIA for MR SB VAKIL for Respondent No.1

MR KG Sheth, A.G.P. for Respondent No.2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 01/10/2002

ORAL JUDGEMENT

1. The appellant was the defendant No.1 in Special Civil Suit No.5 of 1976 in the Court of Civil Judge (S.D.), Bharuch. The respondent No.1 had filed the said suit against the appellant and the respondent No.2 State of Gujarat. The learned Civil Judge (S.D.), Bharuch by

his judgement and order dated 30.06.1979 decreed the said suit in favour the respondent No.1. The appellant has, therefore, filed this appeal challenging the said decree. The State of Gujarat has not challenged the said decree.

2. The plaintiff's case was as follows.

2.1 The plaintiff was the owner of the lands bearing Survey Nos.81 and 82 situated in village Luna. He was also the owner of the land bearing Survey No.78. The defendant No.1 was the owner of the lands bearing Survey Nos.75 and 76. The plaintiff's Survey No.78 and the defendant's Survey No.76 were situated to the West of the plaintiff's Survey Nos.81 and 82 and the Survey No.75 of the defendant No.1 was situated to the West of Survey Nos.76 and 78. The river Kim was to the West of Survey No.75. The river was about 160 feet in breadth. In 1962, he had constructed a water tank on the eastern bank of the river Kim in order to irrigate his lands bearing Survey Nos.81 and 82. He had also installed pipe line for that purpose. Since then he had been taking water from the said river. He had also installed a diesel machine for drawing water. In 1967, he had installed an electrical machine in place of diesel machine. In 1974, water in the river was not sufficient, and hence, he had sunk a bore well in the middle of the river and had placed a submersible pump on the bore well. According to the plaintiff, the land on which he had sunk the bore well was Khadi-Kharaba land. He had given an application to the Mamlatdar, Valia to grant this land admeasuring about 2 gunthas to him, and that, in these proceedings, Prant Officer, Rajpipla by his order dated 17.03.1975 granted the land to him. Thereafter, Talati of village Luna handed over the possession of the above land to him on 25.03.1975 and on 17.05.1975 he had also executed Kabulat. Thereafter, the defendant No.1 sent one application to the Minister, Revenue Department alleging that the land, which was granted to the plaintiff, was not Khadi-Kharaba land but it was a part of his Survey No.75 and that it was alluvial land. On 20.08.1975, the Collector, Bharuch passed an order staying the execution of the above order of the Prant Officer, Rajpipla till the above land was surveyed by the Surveyor of the District Inspector of Land Records Office. Thereafter, the Collector called him and defendant No.1 for hearing of the above proceedings on 06.10.1975. The plaintiff alleged that the Collector had not informed him whether the surveyor had submitted his report or not. On 17.06.1975, the plaintiff had sent an application to the Land Records Superintendent, Vadodara for survey of the above land and he had also paid fees for that purpose.

The Collector by his letter dated 06.11.1975, informed the plaintiff that the land in which the bore well was dug was a part of Survey No.75, which belonged to defendant No.1, and hence, the order dated 17.06.1975, which was passed by the Prant Officer, Rajpipla, had been set aside. The plaintiff, therefore, filed the suit for declaration that the order of the Collector, Bharuch dated 06.11.1975 is illegal, invalid and null and void and for consequential injunction.

3. Both the defendants, who are the appellant and the respondent No.2, filed separate written statements and denied various allegations in the plaint and contended that the order of the Collector, Bharuch was legal and valid.

4. After recording oral and documentary evidence adduced by the parties, the learned trial Judge held that the plaintiff had proved that;

(1) the suit land was Khadi-Kharaba land;

(2) the order dated 06.11.1975 of the Collector, Bharuch was illegal, invalid etc.;

(3) the plaintiff was in possession of the suit land; and

(4) the plaintiff was entitled to the reliefs of declaration and permanent injunction.

5. Thus, the learned trial Judge found that the suit land was Khadi-Kharaba land. He also held that the Collector, Bharuch was not justified in deciding the question of title of the land in revisional proceedings. The appropriate course was for the Collector, Bharuch to hold an inquiry under Section 37(2) of the Land Revenue Code or to refer the parties to the Competent Court to get their title decided. He also held that the Collector, Bharuch had received additional evidence in revisional proceedings but he was not entitled to do so. He, therefore, set aside the order of the Collector.

6. As stated earlier, the State of Gujarat has not filed any appeal challenging the decree of the trial Court which declares that the land in question was Khadi-Kharaba land and that the order of the Collector, Bharuch was illegal and invalid. It is contended on behalf of the appellant that the learned trial Judge has erred in recording the findings on various issues against the appellant. The learned advocate for the appellant

took me through the judgement, but it is not shown how the findings recorded by the learned Judge are erroneous. The learned trial Judge has given cogent reasons for recording the findings. There is no substance in the appeal and the same deserves to be dismissed.

7. The respondent No.1, who was the original plaintiff, had challenged the order of the Collector, Bharuch on various grounds but some of the contentions advanced on his behalf were negatived by the learned trial Judge. The respondent No.1 has, therefore, filed cross-objections challenging the said findings. However, the cross-objections are not pressed and they are, accordingly, disposed of.

8. In view of the above discussions, the appeal fails and is dismissed with no order as to costs.

Sd/-

[M.C.PATEL, J]

'Bhavesh'